In the High Court of Uttaranchal, at Nainital.

Appeal Against Order No. 1244/2001
(Old No. 1267 of 1994)

1- Sunil Kumar Joshi S/o Late
Puran Chandra Joshi,

2- Anil Kumar Joshi S/o Late Puran Chandra
Joshi,

Both residents of Talla Dhania
Tehsil and District Almora … Claimants/Appellants.

Versus

1- Smt. Kanta Devi W/o Lakhan Singh
R/o Rampur Road
Haldwani District Nainital.

2- Bhagirath Lal Dubey S/o Jai Lal
R/o Rampur Road, Haldwani, Nainital.

3- New India Assurance Company
Haldwani through Divisional Manager
Haldwani.

4- Pramod Chandra Singh s/o Harnam Singh
R/o Roop Nagar, Haldwani
District Nainital …Respondents.

Sri Pradeep Kumar, learned counsel for the appellants.
Sri M.K. Aggarwal, Advocate for the Insurance Company.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: May 15, 2006

This Appeal against Order, U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 16-8-1994, passed by the M.A.C.T./IV Additional District Judge, Nainital in M.A.C. Petition No. 279/1988, Jai Kishan and others Vs. Smt. Kanta Devi and others.

2- Brief facts of this case, as emerge out from the record, are that Puran Chandra Joshi was travelling in a bus No. U.R.N. 9428 on 10-1-1998 at about 5 p.m When the bus reached near Jaurasi, which is 25 kilometers away from Almora, the bus turned turtle on account of rash and negligent driving of bus driver. The bus caught fire and on account of this accident Puran Chandra Joshi

succumbed to injuries at the spot. The deceased was working as an Officer in the Bank and was getting Rs. 3,515/- per month as salary. He was aged about 37 years at the time of the accident. The wife of the deceased Puran Chandra Joshi also succumbed to injuries in this accident.

3- The claimants, being the sons of deceased Puran Chandra Joshi, have filed the claim petition through Jai Kishan their next friend for a compensation of Rs. 8,15,000/-.

4- The bus in question was owned by the Opposite Party Nos. 1 and 4 and it was insured with New India Assurance Company/ respondent No.3 at the time of accident. The bus was being driven by Bhagirath Lal Dubey, O.P.No2.

5- The O.P. No.1 Smt. Kanta Devi, who is the owner of the bus, has filed the written statement admitting the ownership of the bus, but she has denied that the bus was being driven rashly and negligently by its driver.

6- The driver of the offending bus did not file any written statement, hence the matter proceeded exparte against him.

7- The O.P.No.3, who is the insurer of the vehicle in question, has filed the written statement stating therein that at the time of the accident respondent No.1 sold the bus in question to respondent No.4 and no information was given to the Insurance Company in this regard. It has also been stated that the bus was not being plied on the route authorized in the permit, therefore, the Insurance Company is not liable for the compensation.

8- The O.P.No.4 has denied this fact that on the date of accident he was the owner of the bus.

9- On the basis of the pleadings adduced by the parties, the Tribunal framed three issues. The first issue was related to the rash and negligent driving of the bus and the accident took place on account of the same. The second issue relates to the question as to whether respondent No.1 Smt.Kanta Devi was not the owner of the offending bus in question. The third issue was with regard to the relief.

10- The Tribunal decided the issue No.1 in favour of the claimant/appellants and concluded that that the bus in question

was being driven rashly and negligently at the time of the accident. The Tribunal has also recorded a finding with regard to issue No.2 observing therein that Smt. Kanta Devi was the owner of the bus in question at the time of the accident.

11- The Tribunal held that a loss of dependency has occurred to the claimant/appellants for a sum of Rs. 1,500/- per month and after adopting the multiplier of 10 the Tribunal awarded an amount of Rs. 1,80,000/- as compensation in favour of the claimant/appellants. The Tribunal has also awarded an additional amount of Rs. 10,000/- for loss of love and affection. The Tribunal also directed that the amount of compensation should be paid to the claimants/appellants along with an interest of 10% per annum.

12- Feeling aggrieved by the aforesaid impugned judgment and award dated 16-8-1994, the claimants have preferred this appeal for enhancement of the amount of compensation.

13- Heard learned counsel fort he parties and perused the record.

14- The sole grievance of the claimant/appellants by way of this appeal is that quantum of compensation as awarded by the Tribunal is too insufficient, unreasonable and meager as well as it is contrary to the facts and evidence on record. The claimants/appellants have thus filed this appeal for enhancement of the quantum of compensation awarded by the claim Tribunal.

15- It is not disputed that the deceased was working with Central Bank of India at the time of accident and was getting Rs. 1,500/- per month as salary. The pay slip of the deceased was produced which shows that in the month of December, 1987 the deceased had received a salary of Rs. 3,515/-. The record of this case shows that the claimants/appellants have also received compensation in lieu of the death of their mother by way of M.A.C.P. No. 281/1988. The finding recorded by the Tribunal that the claimants/appellants have a loss of financial dependency to the tune of Rs. 15,000/- per month on account of death of Puran Chandra Joshi, appears to be quite justified. Had the wife of the deceased been alive then he would certainly incur more

expenditure towards his wife also and out of the salary, which the deceased was getting at the time of the accident, the amount to be incurred against the care of the children as awarded by the Tribunal does not appear to be insufficient. The finding of the Tribunal also appears to be justified that at the time of accident the claimant No.1 was 14 years of age and claimant No.2 was 12 years of age therefore for the next coming 10 years the claimants/ appellants were totally dependents upon their father. The Tribunal has thus rightly adopted a multiplier of 10 in this case and we do not find any justification for interfering in the finding recorded by the Tribunal in calculating the amount of the compensation to be awarded in favour of the claimants/appellants.

16- On the basis of the assessment of evidence on record we are of the view that the Tribunal has rightly awarded an amount of Rs. 1,90,000/- as compensation in favour of the claimants/appellants along with an interest of 10% per annum. We do not find any infirmity or perversity in the impugned judgment and order passed by the Tribunal.

17- The appeal lacks merit and is liable to be dismissed.

18- Accordingly the appeal is dismissed. The impugned judgment and award dated 16-8-94, passed by M.A.C.T./IV Addl. District Judge, Nainital in M.A.C.P. No. 279/1988 is hereby confirmed.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

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